

SUPREME COURT OF QUEENSLAND

CITATION: *R v KBQ* [2026] QCA 123

PARTIES: **R**
v
KBQ
(applicant)

FILE NO/S: CA No 30 of 2026
DC No 2516 of 2024

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane – Date of Sentence: 27 January 2026 (Allen KC DCJ)

DELIVERED ON: Date of Order: 17 June 2026
Date of Publication of Reasons: 3 July 2026

DELIVERED AT: Brisbane

HEARING DATE: 17 June 2026

JUDGES: Bond JA, Bradley JA, Doyle JA

ORDER: **Date of Order: 17 June 2026**
Application for leave to appeal against sentence refused.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – OTHER MATTERS – where the applicant pleaded guilty to making child exploitation material – where the agreed statement of facts and indictment placed the date of the offence between 31 December 2014 and 21 May 2023 – where the maximum penalty for making child exploitation material had changed from 14 years imprisonment to 20 years imprisonment on 9 December 2016 – where counsel for the applicant informed the sentencing judge and the sentencing judge proceeded on the basis that the offences were committed at a time that post-dated the change in maximum penalty – whether the sentencing judge had regard to the incorrect maximum penalty or failed to have regard to the correct maximum penalty in imposing sentence

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to one count of rape of a child, five counts of indecent treatment of a child under 16, under 12, under care, one count of indecent treatment of a child under 16, under 12, one count of making

child exploitation material, and one count of possessing child exploitation material – where the applicant was sentenced to five years imprisonment for the rape offence and lesser concurrent sentences for the other offences, with a parole eligibility date set after 18 months in custody – whether the sentence as a whole was manifestly excessive – whether good character references are relevant in sentencing for offences of a sexual nature committed in relation to a child under 16 years and child exploitation material offences where the offender’s apparent good character assisted them in committing the offence

Penalties and Sentences Act 1992 (Qld), s 9(3A), s 9(3B), s 9(4), s 9(6), s 9(6A), s 9(7), s 9(7AA), s 11

R v FAL [2017] QCA 22, distinguished

R v M [2003] QCA 556, distinguished

R v MAI [2005] QCA 36, distinguished

R v Pham (2015) 256 CLR 550; [2015] HCA 39, cited

R v WAA [2008] QCA 87, distinguished

COUNSEL: S J Bain for the applicant
M A Green for the respondent

SOLICITORS: Sparke Helmore Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

- [1] **THE COURT:** On 17 June 2026, the Court refused the applicant leave to appeal his sentence. The Court did so for the following reasons.
- [2] On 19 August 2025, the applicant pleaded guilty to nine offences. Seven were sexual offences involving physical contact with a child under 12 years of age (the **contact offences**): one count of rape; five counts of indecent treatment of a child under 16, under 12, under care; and one count of indecent treatment of a child under 16, under 12. He committed the contact offences between 18 May 2012 and 31 December 2014. They were not reported to police until July 2022.
- [3] The applicant also pleaded guilty to making child exploitation material (**CEM**), and to possessing CEM.
- [4] On 27 January 2026, the learned primary judge sentenced the applicant to five years imprisonment for the rape offence, with lesser concurrent sentences for the other offences. His Honour fixed 27 July 2027 as the date the applicant would be eligible for parole. This required the applicant to serve at least 18 months in custody before he could apply to serve the balance of his sentence in the community on parole.
- [5] The applicant sought leave to appeal the sentence on two grounds set out in an amended notice of appeal:
 - (a) Ground 1: that the sentencing judge erred in failing to have regard to the correct maximum penalty for the offence of making CEM; and
 - (b) Ground 2: that the sentence was manifestly excessive.

Ground 1: The maximum penalty for making CEM

- [6] The applicant contended that the primary judge had had regard to an incorrect maximum penalty for making CEM or had failed to have regard to the correct maximum penalty. Neither contention was stated or reflected in his Honour's sentencing remarks.
- [7] The applicant asked this Court to infer the error from a table on the first page of the agreed statement of facts, which gave the date of the offence of making CEM as "a date or dates unknown between 31 December 2014 and 21 May 2023" and stated the maximum penalty as "20 years imprisonment".
- [8] On 9 December 2016, the maximum penalty for making CEM had changed from imprisonment for 14 years to imprisonment for 20 years.¹
- [9] The agreed statement of facts accurately recorded the dates for the making CEM count on the indictment. At the sentencing hearing, the applicant's counsel had told the primary judge that the applicant committed this offence "towards the end of that period." His counsel had said the CEM was "created... at a time when [the applicant] started the proceeding against Brisbane Grammar" and that "in 2021, 2022 [the applicant] engage[d] with this process of making imagery". The applicant's written submissions to the primary judge were to the same effect. They stated that he commenced civil proceedings against Brisbane Grammar School in 2021 or 2022 and that it was "at this time" that he "downloaded and created" the CEM. They also stated that he made and possessed the CEM "almost a decade" after the contact offences "ended". The contact offences had ended by 31 December 2014.
- [10] The applicant's psychologist's report tendered at the sentence hearing proceeded on the same basis, noting:
- "With respect to the charges of making child exploitation material, I note that this appears to have occurred 9 years after the contact [offences]. [The applicant] indicated that this can be confirmed via digital records. He explained that he made this material when experiencing a significant re-activation of PTSD in the context of bringing charges against Brisbane [Grammar] School."
- [11] The applicant's submissions and the psychologist's report had placed the applicant's CEM offending four or five years *after* the maximum penalty for making CEM had become imprisonment for 20 years. The primary judge was entitled to receive this information to enable the Court to impose the proper sentence.² At the sentencing hearing, the Crown did not dispute that the applicant committed the making CEM offence in 2021 or 2022. The information was not inconsistent with the applicant's plea of guilty. The primary judge was entitled to act upon it in imposing the sentence.
- [12] In the sentencing remarks, the primary judge told the applicant he was being sentenced on the basis that:
- "the child exploitation material offending occurred during a further fraught period of time in which you in the course of litigation against

¹ Code, s 228B(1)(b), was amended by the *Serious and Organised Crime Legislation Amendment Act 2016* (Qld), s 88(1), which commenced on that day.

² *Penalties and Sentences Act 1992* (Qld) (PSA), s 15(1); *R v Miller* [2004] 1 Qd R 548 at [31] (Holmes J; Williams JA and Muir J agreeing).

the school were required to attend on psychiatrists and discuss the impact of the sexual offending upon yourself.”

- [13] The period stated in the indictment for the count of making CEM was not amended. It remained “a date or dates unknown between 31 December 2014 and 21 May 2023”. This Court could grant leave, set aside the sentence, amend the indictment (or permit the Crown to amend the indictment) to bring the offending period into line with the basis on which the sentencing hearing proceeded, and then resentence the applicant. For the reasons explained below, those steps would result in the imposition of a sentence no more lenient than that which the primary judge imposed. There is no utility in proceeding that way.

Ground 2: Manifestly excessive

- [14] The applicant contended that the sentence was “plainly unreasonable and unjust”, as that expression was used in the final category of discretionary error identified in *House v The King*.³
- [15] The head sentence was imprisonment for five years, attached to the rape offence. Concurrent sentences of two years were imposed for each of the five contact offences committed when the relevant child was under the applicant’s care and for the making CEM offence. The other contact offence, committed against the older child when she was not under the applicant’s care, attracted a concurrent sentence of 12 months. The possessing CEM offence attracted a concurrent sentence of imprisonment for 18 months. It was common ground that his Honour fixed the sentence for the rape taking into account the overall criminality of the applicant’s offending.⁴ The primary judge fixed 27 July 2027 as the date the applicant would be eligible for parole. By then, he will have served one and a half years of the head sentence in custody, which is just below one third of his total sentence.
- [16] The applicant did not contend that there were exceptional circumstances such that he should not serve an actual term of imprisonment.⁵
- [17] The applicant’s counsel had asked the primary judge to consider a sentence under which the applicant’s imprisonment would be suspended after six to 12 months in custody. The applicant’s counsel had suggested that, “[i]f supervision upon release is thought necessary”, this be could be achieved by a prison-probation order, with probation for two years.
- [18] At the hearing in this Court, the applicant conceded that a head sentence of five years was open to the sentencing judge, but submitted that, when combined with a parole eligibility date set after 18 months imprisonment, the sentence as a whole was manifestly excessive.⁶
- [19] In *R v Pham*,⁷ French CJ, Keane and Nettle JJ explained the application of this category of challenge:

“Appellate intervention on the ground of manifest excessiveness or inadequacy is not warranted unless, having regard to all of the relevant

³ (1936) 55 CLR 499, 504-505.

⁴ *R v Nagy* [2004] 1 Qd R 63 at [39] (Williams JA), [66] (Jerrard JA), Muir J agreeing.

⁵ PSA, s 9(4)(c).

⁶ The applicant advocated for a head sentence of four-and-a-half years imprisonment and parole eligibility date set after 12 months imprisonment if this Court’s sentencing discretion were enlivened.

⁷ (2015) 256 CLR 550, 559 at [28(7)].

sentencing factors, including the degree to which the impugned sentence differs from sentences that have been imposed in comparable cases, the appellate court is driven to conclude that there must have been some misapplication of principle.”

- [20] This appeal ground required the Court to consider the relevant sentencing considerations, and any comparable cases.
- [21] The primary judge identified the relevant statutory provisions. For the contact offences, the relevant matters included the nature of the offending, the children’s ages, the effect of those offences on each child, the relationship the applicant had with the children, and the need to protect other children from the risk of the applicant reoffending.⁸ For the CEM offences, the relevant matters included the nature of the CEM, the applicant’s conduct or behaviour in relation to the CEM, and his relationship with the children depicted in the CEM.⁹
- [22] The need to deter similar behaviour by other offenders to protect children generally, the applicant’s prospects of rehabilitation, antecedents and age, remorse for his offending, matters contained in his treating psychologist’s report, and any other relevant matter about the safety of children under 16, were relevant to all the offending.¹⁰ So also were the applicant’s guilty pleas.¹¹

The relevant considerations for sentencing

- [23] The applicant’s most serious offence was the digital vaginal rape of a child. He indecently dealt with the same child on five other occasions: twice on the same occasion as the rape, by licking the child’s body, including her vagina and between her buttocks. On a later occasion, he repeatedly moved the child’s body over his genital area so that his penis became erect. On another, he kissed the child, put his hand on her genital area on top of her clothing, and tried to put his fingers under her shorts.
- [24] On a final occasion, in the absence of the child’s parents, the applicant repeatedly kissed the child on her lips, rubbed his cheek against her cheek, touched her eye, nose and lips, and told her she was “hot”. He recorded this conduct in three videos.
- [25] In the same period, the applicant indecently treated the first child’s younger sister by moving a portable vibrating massager from her back to her vagina over her clothes.
- [26] When the applicant committed each of these offences, he was 45 to 47 years of age. The older child was aged between seven and nine years. The younger child was aged five to seven years.
- [27] The applicant was a friend of the parents of the children. During all but the final offence against the older child, the applicant was “looking after” the children in the absence of their parents. They were under his care. He committed the first three contact offences, including the rape, and the last contact offence against the older child, in the children’s home. He committed the other contact offences when the children were staying overnight in his home or visiting him there.

⁸ PSA, s 9(6)(a)-(e).

⁹ PSA, s 9(7)(a), (ab), and (ac).

¹⁰ PSA, s 9(6)(f)-(k), and s 9(7)(b)-(g).

¹¹ PSA, s 13.

- [28] In May 2023, after police had interviewed the two children, they executed a search warrant at the applicant's home. On his mobile phone, police found:
- (a) seven video recordings, depicting the older child as a teenager dancing or moving her body suggestively, taken from the older child's publicly accessible TikTok feed;
 - (b) seven video recordings made between May 2015 and January 2017, depicting playful interactions between the applicant and the two children;
 - (c) three video recordings of his indecent treatment of the older child referred to in paragraph [24] above; and
 - (d) system-generated artifacts indicating that the mobile phone had been used to view three pornographic videos with the children's faces overlaid over the faces of adult female performers.¹²
- [29] The Crown relied on these recording as evidence of the applicant's sexual interest in the two children.
- [30] In May 2023, in executing the search warrant, the police also found CEM material and other material related to the applicant's offending.
- [31] On the applicant's desktop computer, the police found 12 CEM videos, which the applicant had made.
- [32] To make the 12 CEM videos, the applicant had obtained images of the stepdaughter of another friend from public videos uploaded to TikTok and YouTube. He overlaid those images on the faces of the female performers in pornographic videos he had downloaded. He told police he used a video of the stepdaughter, taken when she was 11 years of age, to make one of the videos viewed during the police search. In the other CEM he made, the applicant overlaid images of the stepdaughter's face – before and during puberty – on the faces of the female performers.
- [33] In all the 12 CEM videos, the applicant can be heard encouraging the stepdaughter (by name) to perform sexual acts on him or herself. In three of the videos, he overlaid images of his own face on the heads of the male performers. He obtained the images of himself from two one-minute-long video recordings depicting a close-up of his face as he commented on sexual acts the stepdaughter was purportedly doing to him or herself. He told police he filmed himself masturbating "to make it look like I'm being with that person".
- [34] Police found 13 videos of CEM on the applicant's laptop. The longest recording, depicting a prepubescent girl engaging in different kinds of penetrative sexual activity, was eight minutes and 52 seconds. The others were between 38 seconds and one minute 25 seconds in length.

Victim impact statements

- [35] Each of the two children the subject of the contact offences provided a victim impact statement for the applicant's sentencing hearing.

¹² The applicant had obtained the images of the children's faces from video recordings that he stored in a dedicated folder on his hard drive.

- [36] The older child, by then aged 20, told the sentencing judge that the abuse she suffered from the offences caused her to lose her “sense of safety and innocence”, so that “trust has never come naturally” to her. This has continued to affect her feelings, relationships, interactions, and “how I move through every element of my life.” It “caused deep, permanent, and irreversible harm.” She explained:

“I live in a constant state of alertness, always bracing myself and always checking my surroundings, and I do not feel comfortable around males specifically. Being alone with men, being touched, or being placed in situations involving closeness or vulnerability often triggers fear and distress. These reactions are not choices – they are the result of trauma that has never fully left my body or mind. This impacts my career, my interactions, and my day-to-day life, as I am constantly cautious about who is nearby and overwhelmed by fear of what they may do to me.

The abuse has deeply affected my ability to be intimate. Physical closeness can feel overwhelming, frightening, and unsafe, bringing back memories of being sexually assaulted even when I want connection. This has caused frustration, embarrassment, and emotional distance in my relationships. The emotional impact has been ongoing and severe. I live with severe anxiety, fear, and distress. I have been depressed, medicated, and treated by multiple psychologists in an attempt to overcome this trauma.

...

One of the most painful consequences is how this trauma affects my thoughts about having and raising children. I live with the fear that I will never be able to fully trust anyone around them. Trusting adults to protect children feels impossible to me, and this fear will follow me into parenthood.”

- [37] The younger child, by then 18, told the sentencing judge she still struggled to trust other people. She lived “with fear, anxiety, and a high sense of alertness, particularly around older men.” She wrote:

“Situations involving older men can cause me to feel discomfort, fear, and panic, even when there is no immediate threat. This fear is not something I choose and has limited my ability to feel safe in everyday situations. I am currently in a relationship, and the abuse has had a significant impact on my intimate life because I struggle with trust and physical closeness, and intimacy can trigger fear, discomfort, or emotional shutdown. This has placed strain on my relationship and has been a painful reminder that the abuse continues to impact my life even now.”

- [38] The children’s mother told the sentencing judge that the applicant’s offending led to “breakdowns” in her relationship with the children, missing important life events and annual celebrations. She felt she had let her children down and so had “the most terrible guilt”. She contemplated ending her own life on three separate occasions.

- [39] The children’s father wrote that he “will always feel that I failed my children, as I could not protect them, and this feeling haunts me with every breath I take.”

- [40] The children's grandmother noted "serious changes" in the older child following the applicant's offending, including being "highly anxious" and dismissing "friends and family members."
- [41] These statements confirmed the serious adverse effect of the applicant's contact offences on each of the two sisters.
- [42] The parents of the other child featured in the CEM offences had decided not to tell her about the applicant's conduct. For that reason, there was no statement about the impact of that offending on her.

Treating psychologist's report

- [43] The applicant obtained a report dated 21 January 2026 from a clinical psychologist who had been treating the applicant since July 2024. The following matters are drawn from the report:
 - (a) In his first year of high school, the applicant was sexually assaulted by the counsellor at the school where he was boarding. This had "a devastating and long-lasting impact" on his life.
 - (b) In about July 2024, the applicant was diagnosed with Adult Attention Deficit Hyperactivity Disorder, for which he has been effectively treated by a specialist psychiatrist.
 - (c) The applicant's arrest in 2023 for this offending "significantly contributed to a period of depressed mood and elevated anxiety". These symptoms had "partially improved over the last six months."
 - (d) In mid-2024, the applicant also reported symptoms of post-traumatic stress disorder, including disassociation, flashbacks, nightmares, anxiety, and significant sleep disturbance. By engaging well with psychological therapy, the applicant had "reported an overall improvement in trauma symptoms in particular the frequency and severity of flashbacks and nightmares." His "symptom pattern continue[d] to warrant a diagnosis of PTSD." Despite this diagnosis, the applicant presented as "a relatively positive and stable personality."
 - (e) His volunteer work indicated he was "community oriented and engaged" with values including "kindness and care to others."
 - (f) His past abuse "negatively impacted his development of healthy interpersonal boundaries and healthy adult sexual behaviour, including at the time of his contact offences." There were indications that these problems "have resolved and are no longer present".
 - (g) He had attended 13 sessions of counselling with the psychologist, which may have reduced the risk of his reoffending.
 - (h) He had consistently expressed remorse in relation to the offences, expressing "reactions of distress, disgust and abhorrence" to the details of the offences as part of "a particularly strong negative emotional response." He had accepted responsibility for all the charges.
- [44] These parts of the psychologist's report were accepted by the primary judge. This is reflected in his Honour's findings that during the period the applicant committed the contact offences he was suffering some mental trauma.

- [45] His Honour did not accept two aspects of the psychologist's report.
- [46] The *first* was the psychologist's opinion that there was a "clear causal relationship" between the applicant's "PTSD and the sexual abuse trauma that he suffered" and him creating the CEM. The psychologist had adopted the applicant's own suggestion that he had committed the CEM offences in an attempt to understand aspects of the sexual abuse he had suffered.
- [47] His Honour explained:
- "I find it difficult to accept that such offending was an attempt to try and understand circumstances of your own sexual abuse at the age of 12, or 'how the perpetration of child sexual abuse is even possible' [referring to the psychologist's report]. It seems to me to be more consistent with a sexual interest in children held at that time and the offending being to satisfy your own sexual gratification."
- [48] The *second* aspect rejected by his Honour was the psychologist's suggestion that the applicant's engagement in therapy "did not reveal indications of paraphilias including paedophilia" and that his response to the topic in therapy was "consistent with a person of minimal risk of reoffending."
- [49] His Honour explained:
- "I place no weight upon the opinion of [the psychologist] that you are unlikely to reoffend by reason of not evidencing any paedophilia. That opinion seems to be based primarily upon your own statements to the psychologist as to the lack of any sexual interest in children and is, therefore, quite inconsistent with the objective facts of your offending."
- [50] The primary judge's reasoning on both topics was sound. As the prosecutor submitted to his Honour, the applicant's conduct evidenced by these offences has the hallmarks of paedophilia and the psychologist's report was not a proper basis to conclude otherwise.
- [51] There is no reason to doubt the soundness of the primary judge's conclusions on these two aspects of the psychologist's report.

The sleep study

- [52] The psychologist noted a December 2025 sleep study which found the applicant had severe obstructive sleep apnoea. The primary judge accepted the applicant's submission that his time in custody was "likely to be more onerous for [him] than someone without that condition." This was because of "the delay that the prison may take in providing him with equipment that might assist" this condition.

The references

- [53] The six references tendered at the sentencing hearing were to the following effect:
- (a) At the applicant's request, a friend of the applicant, who had known him for over 30 years, asked her daughter if the applicant made her feel uncomfortable or threatened at any time. The friend stated that her daughter said he did not. The friend stated the applicant was "a sincere friend and a good guy".

- (b) At the applicant's request, the wife of one of the applicant's best friends, who had known him for about 11 years, asked her stepdaughter if she had ever experienced anything untoward when in the applicant's company. She stated that the stepdaughter said she had not.
 - (c) The applicant's younger sister, with whom he was then living, stated she had seen the applicant "interact with many of our family friends' children and his own friends' children" in ways that "do not align with the charges to which he [was] pleading guilty." She wrote about the applicant caring for his aging parents, assisting her following an injury, and his volunteer work in the community, including at community market stores.
 - (d) A community market store owner, who had known the applicant for about seven years, was "flabbergasted" when first told the applicant would be pleading guilty to the offences. She never observed "anything odd or awkward" about the applicant's interactions with children in her store.
 - (e) Another market store owner, who had known the applicant for about 13 years, and was also a friend, said she was "in disbelief" when the applicant told her of the charges for these offences. She stated the applicant was "the type of person I would not believe" would "commit these charges". She stated he had "expressed deep remorse". She records the applicant's longstanding work as a volunteer at her vinyl record stores.
 - (f) A best mate who had known the applicant for 39 years described him as "a top bloke" with "an extremely kind and thoughtful nature", who "would never harm a fly". The mate was "still a bit dazed" and "still coming to grips with his guilt". He expressed the view "that these charges are certainly not part of his usual character" and that the applicant "would never do any harm again to anyone."
- [54] In sentencing a sexual offender, the Court may treat evidence of good character as a mitigating factor only if it is relevant to the offender's prospects of rehabilitation or the risk of reoffending.¹³ The references were a basis to conclude that it was likely that the applicant would continue to maintain the support of his family and longstanding friends. Those matters are relevant to his prospects of rehabilitation. These and his unpaid caring for family members and other voluntary work were a positive balance to his inability to maintain a satisfactory relationship with a partner (related to his own abuse when a child) and his difficulties maintaining full-time employment (related to his substance misuse), which were also relevant to his prospects.
- [55] There are challenges in vindicating the proposition that a person like the applicant who has committed such offences can be fairly described as having a good character. As the primary judge observed:
- "It is, unfortunately, the case that many persons who come to be sentenced for such offending are otherwise of good character and behaviour."
- [56] As is commonly the case with sexual offences against non-lineal children, the applicant's apparent good character assisted him in committing the contact offences

¹³ PSA, s 9(3A) and (3B).

because it led to the parents of the two children placing them under his care and thus allowing him to spend time with the children in their absence. The applicant's good character not only brought him into contact with those two children, but also with the stepdaughter of another friend, and thereby assisted the applicant in committing the offence of making CEM. So, good character, of itself, is not to be treated as a mitigating factor for any of the offences.¹⁴

- [57] It would also not be appropriate to give weight to the opinion of the referees about the risk of the applicant re-offending or his prospects for rehabilitation.

Comparable cases

- [58] At the sentencing hearing, the Crown prosecutor took the primary judge to the decisions in *R v MAI* [2005] QCA 36, *R v Richards* [2024] QCA 97, and the unreported decision of Rafter SC DCJ in *R v Treasure*, dated 23 September 2019.
- [59] As the prosecutor noted, *MAI* is quite an old decision. The offending was comparable to the three contact offences the applicant committed against the older child on the initial offending occasion. *MAI* involved no additional offending against the same child and none against a second, younger, child. There was no CEM offending. Given its age and limited relevance, the Court's finding that a sentence of imprisonment for three years was not manifestly excessive, was of little assistance in assessing the applicant's sentence.
- [60] In *Treasure*, a teacher aged 40, with no criminal history, had recorded images of girls on the beach and superimposed them on pornographic videos from elsewhere. He was sentenced to imprisonment for four years with parole eligibility after 16 months.
- [61] In *Richards*, the applicant pleaded guilty to one count of possessing CEM and several summary offences. The CEM included over 50 files of varying severity. There were a number of mitigating features which led to a sentence of 12 months imprisonment, wholly suspended for an operational period of three years.
- [62] At the sentencing hearing, after referring to these decisions, the Crown submitted that an accumulation of the individual sentences for the contact offences and the CEM offences would produce an effective total sentence of seven or eight years. Instead, the Crown urged the primary judge to moderate this outcome by adopting the approach in *Nagy*¹⁵ and imposing a head sentence of five years for the rape offence, with lesser concurrent sentences for the other eight offences. The prosecutor submitted that it would be appropriate to fix a parole eligibility date and that suspension of the sentence or the making of a prison-probation order would not be appropriate.
- [63] At the sentencing hearing, the applicant's counsel accepted the Crown's contention that, since *MAI*, sentences for sexual offending against children had increased in severity. He raised three other decisions for the primary judge to consider. As to these:
- (a) The offending in *R v M* [2003] QCA 556 was less serious than the applicant's offending. It is also an old decision.

¹⁴ PSA, s 9(6A) and (7AA).

¹⁵ [2004] 1 Qd R 63, 72-73 at [39].

- (b) *R v FAL* [2017] QCA 22, which the applicant's counsel correctly described as "a very minor example of a maintaining offence," is similarly of little assistance.
- (c) The offending in *R v WAA* [2008] QCA 87 was serious and closer to the applicant's contact offences. However, it involved only one complainant and no CEM offending. It too is an old decision.

Final disposition

- [64] The primary judge balanced the serious nature of the applicant's offending and its corresponding effect on the children against whom he offended, against the matters personal to the applicant, which called for moderation of the sentence that might otherwise have been imposed, including his remorse and guilty pleas.
- [65] After considering the relevant matters, the Court was unable to conclude that the sentence imposed by the primary judge was manifestly excessive.